

Comerica Bank-Detroit  
211 West Fort Street  
Detroit, Michigan 48226

14344  
RECORDATION NO. 1425

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JUN 18 1984 -2 20 PM

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INTERSTATE COMMERCE COMMISSION

Comerica

Bank-Detroit

4-1704053 INTERSTATE COMMERCE COMMISSION June 4, 1984

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

No. JUN 18 1984  
Date .....  
Fee \$ 50.00

RECEIVED

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I.C.C.  
FEE OPERATION BR.

Dear Mr. Secretary

ICC Washington, D. C.

I have enclosed one original and one copy of the documents described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

These documents are as follows:

- (1) Lease No. 5900, a primary document, dated July 1, 1983 and;
- (2) Assignment of Lease and Security Agreement, a primary document, dated July 1, 1983.

We request that the Assignment of Lease and Security Agreement be cross-indexed.

The names and addresses of the parties to the documents are as follows:

- (1) Lessor and Assignor: Bay Development Company  
120 Oak Street  
Tawas City, Michigan 48763
- (2) Lessee: Detroit and Mackinac Railway Company  
120 Oak Street  
Tawas City, Michigan 48763
- (3) Assignee: Comerica Bank-Detroit  
211 West Fort Street  
Detroit, Michigan 48226

A description of the Equipment covered by the documents follows:

One Hundred (100) used Greenville Steel Car 100-ton, 3 pocket, Open Top Hopper Cars, series numbered 5900 to 5999 inclusive.

*Comerica Bank*

A fee of \$50.00 is enclosed. Please return the originals and any extra copies not needed by the Commission for recordation to Comerica Bank-Detroit, 211 West Fort Street, Detroit, Michigan 48226 or designee.

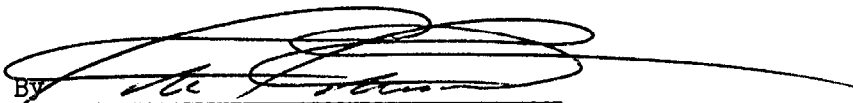
A short summary of the documents to appear in the Index follows:

- (1) For Lease: Lease No. 5900 between Bay Development Company, a Michigan corporation, 120 Oak Street, Tawas City, Michigan, as lessor and Detroit and Mackinac Railway Company, a Michigan corporation, 120 Oak Street, Tawas City, Michigan, a lessee, dated July 1, 1983 and covering One Hundred (100) used Greenville Steel Car 100-ton, 3-pocket, Open Top Hopper Cars, series numbered 5900 to 5999 inclusive.
- (2) For Assignment of Lease and Security Agreement: Assignment of Lease and Security Agreement between Bay Development Company, 120 Oak Street, Tawas City, Michigan, Assignor, and Comerica Bank-Detroit, 211 West Fort Street, Detroit, Michigan, Assignee, dated July \_\_\_\_, 1983 covering Lease No. 5900 between Bay Development Company, as lessor and Detroit and Mackinac Railway Company, as lessee, dated July 1, 1983 and covering One Hundred (100) used Greenville Steel Car 100-ton, 3-pocket, Open Top Hopper Cars, series number 5900 to 5999 inclusive.

If you have any questions with regard to the foregoing, please contact the undersigned.

Yours very truly,

COMERICA BANK-DETROIT

By   
Robert C. Robinson  
Vice President

Enclosures

RCR:MJT:rg25

**Assignment of Lease and  
Security Agreement**

**Comerica**

BANK-DETROIT

14344/A

RECORDATION NO. .... File 1425

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INTERSTATE COMMERCE COMMISSION

This Assignment of Lease and Security Agreement, dated as of the 1st day of July, 19 83, by and between Bay Development Company, a Michigan corporation ("Assignor"), and Comerica Bank-Detroit, a Michigan banking corporation ("Assignee").

**Witnesseth**

WHEREAS, Assignee has extended financial accommodations to Assignor as evidenced by a promissory note ("Note") of even date herewith from Assignor to Assignee in the amount of Five Hundred Thousand and no/100 Dollars (500,000); and WHEREAS, Assignor, as lessor, has entered into a certain lease (the "Lease") (a copy of which is attached hereto) with Detroit & Mackinac Ry., as lessee ("Lessee"), dated July 1, 1983, which Lease provides for the lease by Assignor to Lessee of accounts receivable, contract rights and machinery and equipment arising under that certain Lease #5900 including (100) 100-ton open top hopper cars, Series 5900-5999 inclusive (the "Equipment"); and

WHEREAS, Assignor desires to assign the Lease to Assignee and grant a security interest in the Equipment to Assignee as security for the Note and all extensions and renewals thereof.

NOW, THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

**1. Assignment and Grant.** As security for the Note and all extensions and renewals thereof, and to secure the performance by Assignor of its covenants and warranties hereunder, Assignor does hereby

- (a) sell, assign, transfer, grant and set over to Assignee all of Assignor's right, title and interest in and to the Lease and all amounts payable by Lessee thereunder, including, by way of example and not of limitation, (i) Assignor's right to receive and collect rents, revenue, insurance proceeds, condemnation awards, moneys and security payable to or receivable by the Assignor with respect to any of the provisions of the Lease, whether as rents or as the purchase price of the Equipment or otherwise, (ii) all of Assignor's rights and remedies under the Lease, and (iii) all right, title and interest of Assignor in and to the Equipment under the Lease; and
- (b) grant to Assignee a security interest in the Equipment, and in all additions, attachments, accessions, parts, replacements, substitutions, renewals and cash and non-cash proceeds thereof or therefor, wherever situated, now owned or hereafter acquired.

This Assignment and Security Agreement is made solely as collateral security for the Note and for the obligations of Assignor hereunder, and the execution and delivery hereof shall not impair or diminish the obligations of the Assignor under the Lease or as owner of the Equipment, nor shall any of the obligations contained in the Lease be imposed upon the Assignee, and Assignor shall remain obligated to perform each and every obligation assumed by it under the Lease. Upon payment in full of the Note and all other sums payable thereunder or hereunder, this Assignment and Security Agreement shall terminate and all rights and interests herein assigned and granted to the Assignee shall revert to the Assignor.

**2. Representations and Warranties of Assignor.** The Assignor represents and warrants to the Assignee that:

- (a) The sole original copy of the Lease has been delivered to Assignee;
- (b) The Lease is genuine, enforceable and in full force and effect according to its terms; is not in default (nor has there occurred any event which, with the giving of notice or the passage of time, or both, would constitute such a default), and is the only lease executed with respect to the Equipment;
- (c) Assignor has not executed, made or granted any other assignment or security interest of or in the Lease, the Equipment or other rights, interest or property the subject matter of the assignment and security interest hereby made and granted;
- (d) The Equipment has been delivered to, and accepted by, Lessee in condition satisfactory to Lessee; and
- (e) Assignor has title to the Equipment and the Lease free and clear of all liens, encumbrances and security interests, excepting only the rights of Lessee under the Lease and liens, encumbrances and security interests in favor of Assignee.
- (f) The Lease constitutes the only binding Agreement between Assignor and Lessee.

**3. Covenants and Agreements of Assignor.** The Assignor covenants and agrees that it will, while this Assignment and Security Agreement is in effect:

- (a) Keep the Lease and Equipment free at all times from any and all liens, security interests and encumbrances, excepting only the rights of Lessee under the Lease and liens, encumbrances and security interests in favor of Assignee;

- (b) Not make any other sale, lease or assignment of the Lease or the Equipment, and any such sale, lease or assignment shall be void;
- (c) Not enter into any agreement subordinating, amending, modifying or terminating the Lease without the prior written consent of Assignee, and any such attempted subordination, amendment, modification or termination shall be void;
- (d) Permit the Assignee to examine, inspect and copy any of Assignor's books and records relating to the Lease or the Equipment;
- (e) Designate the Assignee to receive all rents and other payments of every kind and nature, all notices, demands, documents and other communications and all tenders and all security relating to the Lease and the Equipment, which the Lessee is required or permitted to give, make, pay or deliver to or serve upon the Assignor under the Lease;
- (f) Inform Assignee of any knowledge Assignor may have of any failure by Lessee to perform any or all obligations, covenants and agreements under the Lease, or of any default thereunder, or any event which, with the passage of time or the giving of notice, of both, would constitute such a default;
- (g) Except to the extent performed by Lessee under the Lease, keep the Equipment in good condition and repair and safeguard and protect the same from loss, damage or deterioration from any cause whatsoever;
- (h) Except to the extent performed by Lessee under the Lease, collect, prepare and file all tax returns necessary or advisable and pay promptly and within the time they can be paid without interest or penalty all taxes, assessments and similar imposts and charges with respect to the Lease and the Equipment which are now, or hereafter may become, a lien, charge or encumbrance upon the Equipment, except to the extent contested in good faith and bonded or secured satisfactorily to Assignee;
- (i) Except to the extent performed by Lessee under the Lease, insure the Equipment against all risks of loss and physical damage with such insurance companies, in such amounts, and with such loss payable clauses as Assignee shall from time to time require, and to deposit such insurance policies or certificates thereof with Assignee;
- (j) Cooperate with Assignee in any claim, action, lawsuit, repossession or other proceeding which Assignee wishes to undertake in the name of Assignor or Assignee against Lessee or any other person with respect to the Lease or the Equipment;
- (k) Do all acts and things, execute all writings and seek all waivers, disclaimers or consents requested by the Assignee to establish, maintain and continue perfected and prior the security interest of Assignee in the Lease and the Equipment, and pay on demand all costs and expenses of filing and recording the aforesaid, including the costs of any record searches deemed necessary by Assignee to establish and determine the validity and priority of Assignee's security interest;
- (l) Fulfill and comply with all its warranties, representations and obligations under the Lease; and
- (m) Except to the extent performed by Lessee under the Lease, defend and hold harmless Assignee from and against any claim, cause of action, damages, liability, cost or expense which may arise or be incurred in any manner in favor of any person relating to the Equipment and the construction, purchase, delivery, installation, ownership, sale, lease, use maintenance, repair, operation or condition thereof.

**4. Events of Default.** Any of the following events shall constitute an Event of Default hereunder:

- (a) Payment of any part of the principal of or interest on the Note is not made when and as the same becomes due and payable and such failure continues for 10 days thereafter.
- (b) Assignor defaults in the due observance or performance of any other covenant, condition or provision hereof and such default continues for 30 days.
- (c) Assignor ceases doing business as a going concern (other than by merger or consolidation), makes an assignment for the benefit of creditors, admits in writings its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudicated a bankrupt or an insolvent, files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation or files an answer admitting the material allegations of a petition filed against it in any such proceeding, or consents to or acquiesces in the appointment of a trustee, receiver or liquidator of it or all or any substantial part of its assets or properties, or takes any action looking to its dissolution or liquidation, or, if within 60 days after the commencement of any proceedings against Assignor, seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings shall not have been dismissed, or, if within 60 days after the appointment without Assignor's consent or acquiescence of any trustee, receiver or liquidator of it or all or any substantial part of the assets or properties of Assignor, such appointment shall not be vacated.

**5. Remedies.** If an Event of Default occurs, Assignee may by written notice to Assignor declare the entire unpaid principal amount of the Note and unpaid interest thereon and any other sums owed hereunder immediately due and payable and Assignee shall have all the rights and remedies of a secured party under the Uniform Commercial Code of the State of Michigan, or any equivalent provision of the Uniform Commercial Code (or other similar law) of any other relevant jurisdiction, as in effect on the date hereof. If an Event of Default occurs Assignee may exercise (subject to the rights of Lessee under the Lease) all rights and remedies of Assignor, as lessor, under the Lease and apply any amounts realized in connection therewith against the unpaid principal amount of the Note and unpaid interest thereon and other accounts due and payable hereunder. Assignor agrees to reimburse Assignee for all costs and expenses (including reasonable attorney's fees) incurred by Assignee in enforcing its rights hereunder and under the Lease. At such time as all amounts payable hereunder, including all the expenses incurred by Assignee in obtaining such amounts, have been received by Assignee, any proceeds of sale or other disposition of the Equipment by Assignee in excess of such amounts shall be paid to Assignor.

**6. Waiver and Release.** Assignor agrees that Assignee may, in Assignor's name, endorse all notes or remittances received from Lessee, and without notice to Assignor, and, without affecting Assignor's liability in any manner whatsoever, Assignee may waive or release any and all rights against Lessee and grant extensions of time or payment to Lessee.

**7. Severability.** If any term or provision of this Assignment and Security Agreement or any application thereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Assignment and Security Agreement and of any other application of such term or provision shall not in any way be affected or impaired thereby.

8. **Successors and Assigns.** This Assignment and Security Agreement shall be binding upon the parties hereto and their respective successors and assigns.

9. **Governing Law.** This Assignment and Security Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Michigan. Section headings in this Assignment and Security Agreement are included for convenience only and shall not affect the meaning hereof for any purpose.

IN WITNESS WHEREOF, Assignor and Assignee have caused this Assignment and Security Agreement to be duly executed as of the date and year first above written.

BAY DEVELOPMENT COMPANY (Assignor)

By Charles A. Pinkerton

Its President

Comerica Bank-Detroit  
(Assignee)

By [Signature]

Its Vice President